

Before the
Federal Communications Commission
Washington, D.C. 20554

JAY 2 1 1998

In the Matter of)	
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)	
Implementation of the)	
Telecommunications Act of 1996:)	CC Docket No. 96-115
)	
Telecommunications Carriers' Use)	
of Customer Proprietary Network)	
Information and Other Customer)	
Information)	

PETITION FOR RECONSIDERATION

ALLTEL Communications, Inc.¹ ("ALLTEL"), pursuant to section 1.429 of the Commission's rules, hereby submits its petition for reconsideration of the Second Report and Order and Further Notice of Proposed Rulemaking in the above-referenced matter.² ALLTEL joins other carriers and associations in seeking reconsideration on issues of critical importance to carriers and consumers alike. These issues have

¹ ALLTEL Communications, Inc. is the subsidiary of ALLTEL Corporation through which CMRS, long distance, and other competitive telecommunications services are provided to subscribers. Other affiliates and subsidiaries of ALLTEL Corporation provide wireline local exchange services in various states.

² Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 96-115 and CC Docket No. 96-149, FCC 98-27 (released February 26, 1998) (the "Second Report and Order").

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previously been brought to the Commission's attention³ but have been either partially clarified or otherwise not disposed of in the Commission's recent Order.⁴ Among these issues are: the controversial "win-back" rule; the clarified but still untenable rule governing use of CPNI to market CPE and information services; the detailed safeguards requirements; and the request for deferral or stay of the effective date of the Second Report and Order pending reconsideration.

I. The Effective Date of the Second Report and Order
Should be Stayed or Deferred Pending Reconsideration

As an initial matter, ALLTEL notes, as it did in its comments on the CTIA petition, that Section 222 of the Communications Act is self-executing and was effective on the date the Telecommunications Act of 1996 became law. No rule making was required to implement Section 222; rather, the instant proceeding was initiated in response to the requests for guidance submitted largely by wireline local exchange carriers. Grant of either the motion for deferral of the effective date or the GTE stay request does not therefore undermine the objectives of Section 222 but rather, as noted by CTIA, simply maintains the status quo.⁵ In view of the

³ See for example, CTIA Request for Deferral and Clarification (filed April 24, 1998) and the GTE Petition for Temporary Forbearance or, in the Alternative, Motion to Stay (filed April 29, 1998). The CTIA and GTE filings were placed on public notice expeditiously by the Commission and generated numerous comments from both wireless and wireline carriers supporting either the stay or deferral of the effective date of the Second Report and Order. The Commission, regrettably, has yet to act on these requests to stay, forbear or defer the effective date of the rules pending reconsideration.

⁴ See Order in CC Docket No. 96-115, DA 98-971 (released May 21, 1998) (the "Order"). For example, the Order, provided the requested clarification that simple lists of subscriber names, address and phone numbers did not constitute CPNI for purposes of section 222 of the Act or the Commission's rules. The Order, however, failed to either stay or otherwise defer the effective date of the rules or modify the controversial "win-back" provision now contained in section 64.2005(b)(3) of the rules.

uncertainties⁶ and new requirements generated⁷ by the new CPNI rules, many of which go well beyond the text of Section 222.⁸ preservation of the status quo serves the public interest because it maintains a level playing field for the use of CPNI pending reconsideration and further clarification of the rules. If the competitive CMRS market is to continue to thrive and provide the true benefits of competition to consumers, all carriers must be able to market their services under the same clear and well defined set of rules. Similarly, no carrier should be forced to unnecessarily restrain its marketing efforts or expend the resources necessary to comply with the Commission's inordinately detailed safeguard requirements until the rules are settled.

As amply demonstrated by CTIA, the Commission has broad discretion under both the Administrative Procedures Act and its own rules to defer the effective date of the Second Report and Order. The need for deferral is particularly keen in view of the procedural issues raised by CTIA, notably the lack of notice of the prospective promulgation of new Section 64.2005(b)(3) of the rules and the absence of any record

⁶ In this connection, ALLTEL notes that the Commission has deferred the effective date of the Second Report and Order as it regards enforcement of the safeguard requirements and is currently considering further enforcement mechanisms. While supporting the position that carriers desperately need adequate time to implement the safeguards should they survive reconsideration, ALLTEL is constrained to note that the separation of the effective date of the new rules from that of the enforcement mechanisms, as a purely practical matter, essentially maintains the status quo.

⁷ The abundant uncertainty over the scope of the rules is demonstrated by the need for CTIA to request clarification on even the most elemental definitional matter—whether a simple subscriber list constitutes CPNI. Although ALLTEL believes that a subscriber list of names and addresses does not constitute either CPNI or subscriber list information under the Section 222 definitions, it shares CTIA's request that the rule be clarified.

⁸ As noted below, the safeguards required by the Commission are new to many CMRS carriers and other carriers not previously to Computer III.

⁹ As noted by many of those filing comments in response to the CTIA and GTE filings, Section 222 required neither the detailed safeguards or the "win-back" rule promulgated by the Commission in the Second Report and Order.

supporting the adoption of the new rule. Similarly, in ALLTEL's view, the application of a time-worn doctrine of wireline regulation to a substantial number of wireless carriers for the first time, rises to the level of arbitrary and capricious decision making. Application of the Computer III doctrine separating information services, CPE, and basic services to CMRS services is, as amply and fully argued by CTIA and others, without any basis in policy or the record. The new rule ultimately harms both the carriers' ability to compete in the marketplace and the subscribers' ability to receive the service packages they desire at a favorable price.

ALLTEL renews its request that any deferral of the effective date of the Second Report and Order's safeguard requirements should be tacked onto the current eight month period for deferral of enforcement of the safeguard provisions so that CMRS carriers may have the time required to adequately develop and implement the detailed safeguards the CPNI rules now require, should they survive reconsideration. The Commission placed the safeguard requirements on all carriers largely because subscriber privacy concerns apply regardless of the size of the carrier or market share.⁹ The Commission, however, acknowledged that its new CPNI scheme would place additional burdens on those carriers who were not previously subject to the Computer III CPNI requirements and invited small and rural carriers to seek a waiver of the rules where the requirements would be unduly burdensome.¹⁰ ALLTEL is one of a number

⁹ Second Report and Order at para. 193.

¹⁰ Second Report and Order at para. 194. In this connection, ALLTEL notes that the relief sought by ALLTEL and CTIA for CMRS carriers should be granted to any telecommunications carrier which had previously not been subject to the Computer III CPNI requirements, including ALLTEL's affiliated local exchange companies. In this connection, ALLTEL also supports the substance of the GTE petition.

of such carriers; it has never been subject to the Computer III CPNI requirements and the safeguard requirements are new to it. The development and implementation of the safeguard systems and the training of personnel will take both time and resources. The eight month deferral period for enforcement of the safeguard requirements is not simply an insufficient amount of time; it is a draconian deadline which augurs for haphazard implementation and puts a carrier at risk of non-compliance despite its best efforts. It places a competitive advantage in the hands of those companies with far greater resources and more experience in dealing with CPNI safeguards, which, it should be noted, were instituted to police their greater anticompetitive potential.¹¹ Deferral of the Second Report and Order's safeguard provisions pending reconsideration would give carriers the needed additional time to comply, should the rules continue to exist or be modified in the wake of reconsideration.¹² The deferral would also conserve the Commission's resources and prevent it from having to rule on waiver requests prior to the expiration of the deferral of the enforcement period.

¹¹ This concern is particularly keen where, as in the Order, the Commission has seen fit to deem the notices provided by larger carriers subject to the Computer III regimen as substantially complying with the new rules governing CPNI. See Order at pages 8-10.

¹² In this connection, ALLTEL notes that Section 222, while imposing the obligation on carriers to protect CPNI, nowhere requires the extensive set of safeguards which the Commission has now promulgated.

II. The Commission Should Abandon the Distinction
For CPE and Information Services and Freely Permit
the Marketing of Bundled Services as an Integrated Package

The interrelationship among CPE, information services and the provision of the underlying service has been well documented and argued by CTIA in the wireless context and by GTE in both the wireless and wireline contexts.¹³ While the Commission in its recent Order provided wireless carriers with some flexibility to market fully bundled services,¹⁴ it refused to fully release wireless carriers from the remnants of wireline regulation.¹⁵ By maintaining the prohibition on the use of CPNI to bundle service, CPE and information services where the subscriber has only signed up for service, however, the Commission has ignored the essence of CTIA's and other carriers' arguments as to the basic interrelationship of service, equipment and information services in the wireless market.¹⁶ For example, the clarification offered by the Commission in the Order would, in practice, preclude a carrier from using CPNI to market a digital phone to an analog subscriber who simply had their own phone in hand when first subscribing for service. In such situations, the public policy reasons to permit use of CPNI to market CPE for digital conversions are no less compelling than where the subscriber had purchased both the service and the phone

¹³ See CTIA petition at page 16; GTE petition at pages 9-10.

¹⁴ See Order, at pages 3-6.

¹⁵ In an era of converging high-speed technologies dependent on both service and equipment for delivery, ALLTEL believes that the prohibition on wireline bundling of service and CPE makes little sense as GTE persuasively argues.

¹⁶ See for example, Comments of SBC Communications, Inc. (dated May 8, 1998) at page 3-9.

from the same carrier. Instead of providing a narrowly drawn distinction for the wireless industry in order to preserve the vitality of the bundling prohibition on wireline carriers, the Commission should do away with the prohibition on the use of CPNI to market CPE and information services entirely.¹

III. The “Win-Back” Rule Was Not Required by
Section 222 and Its Application Harms Competition.

Section 64.2005(b)(3) of the rules prohibits a carrier’s use of CPNI to “win-back” a customer or possibly simply retain a customer. As amply argued to CTIA in its petition, the rule, frustrates the vigorous price competition which results when different carriers compete for the subscriber’s account. In essence, the rule deprives the subscriber of engaging competing carriers in a bidding war. No such result could be less in the consumer’s interest. In view of the issues raised by CTIA including the absence of any basis in section 222 of the Act and the lack of requisite prospective notice of the rule’s promulgation, the Commission should, on reconsideration, eliminate section 64.2005(b)(3).

¹ In this connection, ALLTEL agrees with other carriers, such as SBC Communications, Inc., that have argued persuasively in the wireline context that the CPE restrictions inordinately interfere with the marketing of caller ID equipment and equipment needed for high speed data networks. See SBC Comments (filed May 8, 1998) at pages 13-19.

IV. The Safeguards Are Overly Burdensome and
the Detail Required by the Commission is
Not Required by Section 222

The Commission has instituted use restrictions on CPNI with granular detail, including a system of “flags” which must not only appear on the first computer screen, but must be in the first few lines of that screen.¹⁸ The Commission has noted further, that while it intends to enforce its rules upon the effective date, it will not seek to enforce the safeguard requirements for a period of eight months.¹⁹ While the record indicates that certain carriers noted that the flag system would be easy to implement, those carriers were generally subject to the Computer III requirements.²⁰ Virtually all other carriers, whether wireline or wireless, rural or urban, must start from scratch. Although the Commission has indicated that it will defer its enforcement of the safeguard rules for eight months, that period contradicts indications in the record that use restrictions could take 9-18 months to implement for the largest carriers.²¹

While small and rural carriers may avail themselves of the waiver process, the Commission is under the obligation in the first instance to justify the imposition of these rules on all carriers and to assess their impact on smaller carriers. Commission manifestly failed to do so either by affording wireless, small or rural carriers additional time to comply with the rules or by modifying the requirements to fit the resources of

¹⁸ See Second Report and Order at para 198.

¹⁹ *Id.* at para 202.

²⁰ For example, the Commission cites Bell Atlantic/NYNEX as one of those carriers indicating that the flag system could be implemented with some degree of ease.

²¹ See Second Report and Order at n. 687.

these carriers.²² In view of the fact that section 222 nowhere requires the elaborate set of safeguards which the Commission now includes in its rules, the Commission must reconsider the application of the enforcement time frames and other requirements to wireless, rural and small carriers. At a minimum, as noted above, the Commission should defer the safeguard requirements for these carriers pending reconsideration of the rule.

Respectfully submitted,

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²² In this connection, ALLTEL notes that the safeguards are yet another Commission mandate which will ultimately siphon off the resources perhaps better spent on the deployment of advanced and competitive telecommunications infrastructure.